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**Subject: Another ASARCO Ruling**

## Superfund

Union Pacific Railroad Wins Dismissal;  
Asarco Contribution Claim Time-Barred

### BNA Snapshot

*Asarco LLC v. NL Indus. Inc.*, 2015 BL 162695, E.D. Mo., No. 11-CV-864, 5/22/15

**Key Holding:** Federal court says Asarco LLC can't add Union Pacific Railroad Co. as a defendant in a Superfund action over contamination from railroad beds because of timeliness issues.

By Peter Hayes

May 26 — Asarco LLC can't add Union Pacific Railroad Co. as a defendant in a Superfund action in Missouri over contamination from railroad beds because it failed to notify the railroad within 120 days of filing the original complaint, a federal court has ruled (*Asarco LLC v. NL Indus. Inc.*, 2015 BL 162695, E.D. Mo., No. 11-CV-864, 5/22/15).

The mining company's allegations against Union Pacific are barred by the Superfund law's three year statute of limitations for claims arising from a settlement with the government, the U.S. District Court for the Eastern District of Missouri said May 22.

In this case, the court said, the clock for filing a claim began running when a bankruptcy court approved Asarco's Superfund settlement May 12, 2008.

Asarco failed to avoid the statute of limitations bar by satisfying the requirements of Fed. R. Civ. P. 15(c), under which an amended complaint may relate back to the date of the original complaint if the party being added is notified within 120 days of the filing of the initial complaint, the court said.

### Asarco Signed Agreement

On Feb. 8, 2008, Asarco signed a settlement agreement regarding several sites referred to as the Southeast Missouri Mining District (SEMO) sites, which were contaminated by lead, cadmium and zinc. On May 12, 2008, a bankruptcy court approved the settlement.

On May 12, 2011, Asarco filed its original complaint asserting contribution claims under the Comprehensive Environmental Response, Compensation and Liability Act against various defendants, including Burlington Northern Santa Fe Railway Co. (BNSF).

On Sept. 14, 2011, Asarco filed an amended complaint, asserting a CERCLA contribution claim against Union Pacific over contamination from railroad beds in two Missouri counties.

Asarco sought to hold the railroad liable for contamination from “chat”—mining waste—used in the construction of the railroad beds that allegedly caused releases through erosion and dissolution of metals.

#### Union Pacific Said Claim Time-Barred

Union Pacific moved to dismiss, arguing the claim is time-barred.

Dismissing the claim, the court said Asarco failed to provide notice sufficient to comply with Rule 15(c).

“This is not a case where a plaintiff sued the wrong party. Here, Asarco clearly knew before the expiration of the statute of limitations that Union Pacific operated in SEMO, despite the complicated history of rail ownership in the area,” the court said.

Citing the Eighth Circuit precedent in *Brown v. E.W. Bliss*, 818 F.2d 1405 (8th Cir. 1987), the court said the relation back doctrine doesn't authorize relation back of an amended complaint without timely notice, even if the correct defendant is difficult to identify.

The court rejected Asarco's plea for equitable tolling of the limitations period based on difficulty in identifying Union Pacific as a defendant.

#### Asarco Had Information

“Asarco had all the information it needed to file its CERCLA contribution claim against Union Pacific within the limitations period,” the court said.

The court cited a 2007 report by an environmental lab identifying railroads that might have contributed to the contamination, as well as an Asarco corporate witness who acknowledged that by the time of filing the original complaint, Asarco had enough information to believe the railroads could have potential liability.

Judge John A. Ross wrote the opinion.

Integer Law Corp. represented Asarco.

Buckley and Buckley LLC represented Union Pacific.

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## For More Information

The opinion of the U.S. District Court for the Eastern District of Missouri in Asarco LLC v. NL Indus. Inc. is available at

[http://www.bloomberglaw.com/public/document/Asarco LLC v NL Indus Inc No 411CV00864JA](http://www.bloomberglaw.com/public/document/Asarco_LL_C_v_NL_Indus_Inc_No_411CV00864JA)

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